

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**


WESTWIND ACQUISITION CO., LLC
and MONROE, LLC,

Plaintiffs/ Counter-Defendants

V.

UNIVERSAL WEATHER AND
AVIATION, INC.,

Defendant/ Counter-Plaintiff.



Case. No. 1:09cv551
TSE/TRJ

**DEFENDANT/ COUNTER-PLAINTIFF UNIVERSAL WEATHER
AND AVIATION, INC.'S RESPONSE TO PLAINTIFFS/ COUNTER-DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Defendant/ Counter-Plaintiff Universal Weather and Aviation, Inc.,
through undersigned counsel, and, responding to the Motion for Partial Summary Judgment filed
in this action by Plaintiffs/ Counter-Defendants Westwind Acquisition Co. LLC, and Monroe.
LLC., Respondent would show unto the Court as follows:

1. Plaintiffs/ Counter-Defendants Westwind Acquisition Co. LLC, and Monroe. LLC., (hereinafter “Movants”) are not entitled to partial summary judgment in their favor on Count 1 of their Complaint and Counts 1 and 2 of the Counterclaim filed by Defendant/ Counter-Plaintiff Universal Weather and Aviation, Inc. (hereinafter “Universal”). The summary judgment record before the Court fails to meet the standards required for such a motion by FED. R. CIV. P. 56, for the following reasons:

(A) Movants have failed to establish any right to judgment in their favor as a matter of law, in that they have failed to establish that TEX. PROPERTY CODE §70.301, the

statutory basis for the liens filed by Universal Weather and Aviation, Inc., is inapplicable to this case as a matter of law.

(B) Movants have failed to negate Universal's right proceed in *quantum meruit* in Universal's Counterclaim; the summary judgment record shows there is evidence in support of that theory of recovery; thus, summary judgment disposing of Count Two of the Counterclaim cannot be granted.

(C) Movants have failed to establish as a matter of law any contractual or statutory basis for the award of attorney's fees they seek.

(D) While Universal agrees that there are certain undisputed material facts in this case, our responsive papers establish that there are also genuine issues of material fact in this case that must be adjudicated through trial on the merits, precluding summary judgment under Rule 56.

2. In support of this Response, Defendant/ Counter-Plaintiff is filing and serving the Affidavit of Ouida Caloway, its Supervisor of Collections, establishing the existence of genuine issues of material fact precluding summary judgment, and its Memorandum of Authorities, disproving any theory of entitlement to judgment as a matter of law in favor of Plaintiffs/ Counter-Defendants.

Wherefore, Defendant/ Counter-Plaintiff Universal Weather and Aviation, Inc., prays that the Motion for Partial Summary Judgment filed in this action by Plaintiffs/ Counter-Defendants Westwind Acquisition Co. LLC, and Monroe, LLC, be denied; and that Defendant/ Counter-Plaintiff Universal Weather and Aviation, Inc., have such other and further relief, both general and special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

/s/ Arnold G. Polanco

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*Counsel for Defendant/ Counter-Plaintiff
Universal Weather and Aviation, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2009, I electronically filed the foregoing Response and Supporting Affidavit of Ouida Caloway, with the Clerk of Court, using the CM/ ECF system, which will then send a notification of such filing to opposing counsel identified hereinbelow. I further certify that on the date of such filing, I served the foregoing Response and Supporting Affidavit by electronic mail, as follows:

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/s/ Mark C.

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